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May 21, 2008

The Honorable George B. Daniels
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007
(by fax)

SO ORDERED

George B. Daniels
HON. GEORGE B. DANIELS

MAY 28 2008

Re: Allen Wiggins v. Ercole, et al.
08 Civ. 3053 (GBD)

Dear Judge Daniels:

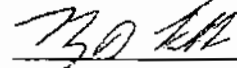
This Office represents respondents in this habeas corpus proceeding brought pursuant to 28 U.S.C. § 2254. After recently being served with petitioner's Memorandum of Law, I discovered through a PACER search that, on March 28, 2008, Your Honor had issued an Initial Pretrial Conference Order, scheduling an initial pretrial conference for June 25, 2008.

Although this Order was issued pursuant to Rules 16 and 26 (f) of the Federal Rules of Civil Procedure, these Rules do not apply to habeas corpus proceedings. See Fed. R. Civ. P. 16 (b); Local Rule 16.1 (matters involving habeas corpus petitions are exempted from mandatory scheduling order required by Rule 16(b)); Fed. R. Civ. P. 26 (a)(1)(B) (iii) (a petition for habeas corpus is exempt from initial disclosure requirements of Rule 26(f)). Instead, habeas corpus proceedings brought pursuant to 28 U.S.C. § 2254 are governed by the Rules Governing Section 2254 Cases in the United States District Court (although the Federal Rules of Civil Procedure may still apply where they are not inconsistent with the Section 2254 Rules [Rule 11, Rules Governing Section 2254 Cases]).

Accordingly, respondent respectfully requests that this Court's Order dated March 28, 2008 be rescinded and that the case proceed under the Rules Governing Section 2254 Cases.

Thank you for your consideration in this matter.

Sincerely,



NANCY D. KILLIAN
Assistant District Attorney
Attorney for Respondent

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